

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JUAN AGUILAR-CORTEZ,

Defendant.

No. 2:95-cr-20 WBS

ORDER

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Defendant Juan Aguilar-Cortez has filed a motion to reconsider the denial of his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A). (Docket Nos. 326, 336, 337.)

Defendant's motion to reconsider only raises arguments already asserted in his initial motion and already considered by the court. Thus, his purported inability to file a reply in support of the initial motion within the court deadline set by the court did not prejudice defendant because he does not present any argument now which the court did not previously consider.

Similarly, the court's denial of his motion to appoint

1 counsel did not prejudice him because such assistance would not
2 change the result of the motion. The court recognizes that some
3 courts have found that the First Step Act gives courts discretion
4 to consider virtually any reason as a basis for compassionate
5 release. See, e.g., United States v. Brooker, 976 F.3d 228, 230
6 (2nd Cir. 2020). However, given the language of 18 U.S.C. §
7 3582(c)(1)(A), which requires that a defendant demonstrate, among
8 other things, that a reduction in sentence is consistent with
9 applicable policy statements issued by the Sentencing Commission,
10 and the lack of any Ninth Circuit authority to the contrary, this
11 court continues to assess whether a sentence reduction is
12 consistent with the applicable policy statements issued by the
13 Sentencing Commission. See 18 U.S.C. § 3582(c)(1)(A); accord
14 United States v. Dvorak, 830 F. App'x 846, 847 (9th Cir. 2020)
15 (citing U.S.S.G. § 1B1.13(1)(A) and affirming district court's
16 denial of motion for compassionate release based on determination
17 that the defendant had not demonstrated extraordinary and
18 compelling reasons).

19 Here, California's reclassification of one of
20 defendant's prior felonies from a felony to misdemeanor is not
21 one of the bases for compassionate release listed by the
22 Sentencing Commission or by the Bureau of Prisons. Nor is it
23 even remotely similar to any of the bases listed. See 18 U.S.C.
24 § 3582(c)(1)(A); U.S.S.G. § 1B1.13(1)(A). The court recognizes
25 defendant's contention that if he were sentenced today, he might
26 receive a substantially shorter sentence. Nevertheless, as this
27 court previously explained, "[w]hen a state grants post-
28 conviction relief to a defendant with respect to his state felony

1 conviction, [federal courts] do not generally apply those changes
2 retroactively for purposes of determining whether a federal
3 sentencing statute's requirements are met." United States v.
4 Diaz, 838 F.3d 968, 972 (9th Cir. 2016). Accordingly, the court
5 continues to reject defendant's contention that the
6 reclassification of his prior state conviction warrants
7 compassionate release.

8 The court also continues to reject defendant's
9 contention that his health condition, alone or in combination
10 with the reclassification of his prior felony conviction,
11 constitutes extraordinary and compelling circumstances warranting
12 compassionate release. As discussed previously, it appears that
13 the Bureau of Prisons is properly treating defendant's medical
14 conditions. Further, the court notes that COVID-19 vaccines are
15 becoming increasingly available, with the President recently
16 announcing that "[b]y the end of July, we'll have over 600
17 million doses, enough to vaccinate every single American."
18 Maureen Chowdhury, Biden: Covid-19 Vaccines Will be Widely
19 Available by the End of July, CNN.com, Feb. 16, 2021,
20 [https://www.cnn.com/politics/live-news/joe-biden-town-hall-02-16-](https://www.cnn.com/politics/live-news/joe-biden-town-hall-02-16-21/h_dcc5457025a71bf4fbdd1d92d42bab35)
21 [21/h_dcc5457025a71bf4fbdd1d92d42bab35](https://www.cnn.com/politics/live-news/joe-biden-town-hall-02-16-21/h_dcc5457025a71bf4fbdd1d92d42bab35).

22 The court will not speculate as to when a vaccine will
23 be offered to defendant, but there is no reason to believe that
24 the general prison population will be vaccinated any later than
25 the majority of the public, and by all reports, the vaccines
26 available in the United States are extremely effective in
27 preventing moderate or severe COVID-19 infections. Thus, in
28 effect, defendant asks to be permanently released from physical

1 custody based on a risk that will have been largely mitigated
2 before the end of the year, if not much earlier. Under the
3 circumstances here, the court is unwilling to grant such a
4 request.

5 IT IS THEREFORE ORDERED that defendant Juan Aguilar-
6 Cortez's motion to reconsider (Docket No. 337), be, and the same
7 hereby is, DENIED.

8 Dated: March 11, 2021



9 **WILLIAM B. SHUBB**
10 **UNITED STATES DISTRICT JUDGE**
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